

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR no.1916 of 2016 (O&M)

Date of Decision: 10.10.2018

Mohindera Finance

...Petitioner

Vs.

Lakha Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Nitin Thatai, Advocate, for the petitioner.
None for the respondent.

Amol Rattan Singh, J (Oral)

By this petition, the petitioner-company challenges the order of the learned Civil Judge (Jr. Divn.) Tarn Taran, dated 03.02.2016, by which the application of the present petitioner, i.e. defendant in the suit filed by the respondent-plaintiff, seeking that the suit be not proceeded with and instead an Arbitrator be appointed in terms of Section 8 of the Arbitration and Conciliation Act, 1996, as there was an arbitration clause in the agreement between the parties, has been dismissed.

The dismissal is on the ground that jurisdiction of the Civil Court had not been invoked to decide the rights of the parties, with in fact the suit being one only seeking a decree of prohibitory injunction against the present petitioner, that it may not forcibly take possession of the truck purchased by the respondent-plaintiff, on a loan having been extended by the petitioner.

Whereas I see absolutely no infirmity in the order as regards

the maintainability of a suit seeking prohibitory injunction restraining the defendant from taking forcible possession of any property, (without prejudice to the rights of the defendant as regards the right to take over the property (truck) by due process of law), however, the impugned order also notices that in fact it was the contention of the defendant (present petitioner), that the truck had been voluntarily surrendered to the petitioner by the co-borrower of the loan taken by the respondent herein.

It is seen that after notice was issued in this petition on March 15, 2016, Mr. S.S. Deol, Advocate, had put in an appearance for the respondent on August 4, 2016. Though on that date the petition had been adjourned to 15.09.2016, its turn did not come up for the next few dates, with an application (CM no.6832-CII of 2017) having been filed on April 5, 2017 by the petitioner, seeking to place on record an Arbitral Award dated 21.10.2016 and a judgment of this Court passed in CR No.7424 of 2014 on 07.03.2016, (which learned counsel for the petitioner submits actually covers the entire case in favour of the petitioner).

Notice in that application having been issued on April 05, 2017, but again the turn of the case not having come up till September 07, 2017, on which date none appeared for the parties, leading it to be adjourned to 30.11.2017. On that date and on the next three dates, the counsel for the respondent-plaintiff did not appear, though counsel for the applicant-petitioner had been appearing regularly.

Consequently, on September 11, 2018, this application and the petition itself had been ordered to be adjourned till today, with the case to be shown in the urgent list and counsel for the respondent, i.e. Mr. S.S.

Deol, Advocate, directed to be informed by the Registry, of the date of hearing.

Today again he is not present. Hence, it is to be accepted by this Court that as a matter of fact that the truck in question has been surrendered to the company, thereby rendering this petition and in fact the suit itself infructuous, due to which the respondent is not putting in appearance.

Disposed of as such.

10.10.2018
vcgarg/dinesh

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : No